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In the Matter of:	)	
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2012 UOCAVA Absentee Ballots	)	Findings and Order
	)	
For the 2012 Federal Elections	)	Case No. EL12-11
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	)	
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Pursuant to Wis. Stats. §§5.05(1)(e) and 5.06(6), the Wisconsin Government Accountability Board (hereinafter, the “Board” or the “G.A.B.”) hereby makes the following Findings and Order:

### **FINDINGS**

- 1) The United States Department of Justice (“US DOJ”) filed a lawsuit against the State of Wisconsin and its election officials in the Western District of Wisconsin federal court. The lawsuit alleges that at least 65 municipal clerks in Wisconsin failed to timely provide at least 227 absentee ballots to military and overseas voters who had submitted ballot requests 45 days before the 2012 Presidential Preference Primary Election, and therefore had failed to satisfy the requirements of the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”), 42 U.S.C. §§ 1973ff to 1973ff-7.
- 2) In settlement of the litigation, the US DOJ and the State of Wisconsin entered into a consent decree which was adopted as an order of the federal court in *United States of America v. The State of Wisconsin*, et al., Case No. 12-CV-197. The terms of the consent decree and court order are intended to provide Wisconsin’s military and overseas voters the time specified under federal law to receive, mark, and transmit absentee ballots in order to have those ballots counted in the 2012 Presidential Preference Primary Election and in remaining 2012 Federal elections.
- 3) Several terms of the consent decree and federal court order require state and local election officials to take actions regarding the receipt and processing of UOCAVA ballots which were not timely transmitted for the 2012 Presidential Preference Primary, as well as to complete additional reporting requirements related to all 2012 Federal elections.
- 4) The consent decree and federal court order require the Board and local election officials to take steps to ensure:
  - a. that all UOCAVA voters who timely request an absentee ballot have sufficient opportunity to participate in the Presidential Preference Primary Election and in remaining 2012 Federal elections,

- b. that municipal clerks in late-transmittal municipalities submit timely reports with the Board regarding the number of UOCAVA absentee ballots transmitted, received, and counted for the 2012 Presidential Preference Primary,
- c. that all municipal and all county clerks submit timely reports with the Board regarding the number of UOCAVA absentee ballots transmitted, received, and counted for the 2012 Partisan Primary Election and 2012 General Election, and
- d. that the Board compile and transmit the information provided by local election officials as described above to the US DOJ.

### **ORDER**

Based upon the above Findings, the Board issues the following orders to all local election officials.

- 1) In this Order, the term “local election officials” includes city, village, town, and county clerks as well as the administrator of the Milwaukee County Election Commission and the executive director of the City of Milwaukee Election Commission. The term “county clerks” includes county clerks and the administrator of the Milwaukee County Election Commission. The term “municipal clerks” includes city, village, and town clerks, and the executive director of the City of Milwaukee Election Commission.
- 2) In this Order, “non-reporting municipalities” means municipalities which have not confirmed with the Board whether they received requests for absentee ballots from UOCAVA voters for the 2012 Presidential Preference Primary Election, or whether ballots were sent to those voters who submitted timely requests on or before the 45-day transmittal deadline of February 18, 2012.
- 3) In this Order, “late-transmittal municipalities” means municipalities which did not transmit ballots by the 45-day deadline of February 18, 2012 to UOCAVA voters who requested ballots for the 2012 Presidential Preference Primary Election by that date.
- 4) As set forth below, notwithstanding any provisions of Wisconsin Statutes to the contrary, local election officials shall cooperate to comply with the terms of the consent decree and court order in *United States of America v. The State of Wisconsin*, et al., Case No.12-CV-197, to ensure that all UOCAVA voters who timely request an absentee ballot have sufficient opportunity to participate in the Presidential Preference Primary Election and in remaining 2012 Federal elections.

#### **Obligations of Municipal Clerks of Non-Reporting Municipalities**

As of March 22, 2012, 347 of Wisconsin’s 1,851 municipalities have not responded to the Board’s repeated requests to confirm whether they received requests for absentee ballots from UOCAVA voters for the 2012 Presidential Preference Primary Election, or whether ballots were sent to those voters who submitted timely requests on or before the 45-day transmittal deadline of

February 18, 2012. A list of non-reporting municipalities is attached as Exhibit 1. Municipal clerks of non-reporting municipalities shall immediately contact the Board to provide that requested information by contacting the G.A.B. Help Desk at 608-261-2028.

Any municipal clerk of a non-reporting municipality in which an absentee ballot for the Presidential Primary Election was not transmitted by February 18, 2012 to a UOCAVA voter who had requested a ballot by that date shall also be subject to the orders pertaining to late-transmittal municipalities below.

#### Obligations of Municipal Clerks of Late-Transmittal Municipalities

As of March 22, 2012, at least 65 municipalities have confirmed that they did not transmit ballots by the 45-day deadline of February 18, 2012 to UOCAVA voters who requested ballots for the 2012 Presidential Preference Primary Election by that date. A list of late-transmittal municipalities is attached as Exhibit 2. The failure to transmit absentee ballots to UOCAVA voters who requested them by February 18, 2012, the 45th day before the April 3, 2012 Presidential Preference Primary Election, constitutes a violation of Section 102(a)(8)(A) of UOCAVA, 42 U.S.C. § 1973ff-1(a)(8)(A). Municipal clerks of late-transmittal municipalities shall comply with the following Orders in conducting the 2012 Spring Election and Presidential Preference Primary:

- 1) The deadline for receipt of ballots from UOCAVA voters for the April 3, 2012 Presidential Preference Primary is extended beyond April 3, 2012 in late-transmittal municipalities by the total number of days past February 18, 2012 that each such municipality transmitted the requested ballots. For those late-transmittal municipalities that transmitted UOCAVA ballots one to three days past the 45-day deadline, the deadline for receipt of ballots from UOCAVA voters is April 6, 2012.
- 2) Absentee ballots from all UOCAVA voters in late-transmittal municipalities which are postmarked or show a dated endorsement of receipt by an agency of the United States government by April 3, 2012, and are received by the close of business on the date of the applicable extended receipt deadline shall be accepted and tabulated in the final Presidential Preference Primary Election results. Municipal canvassing boards shall meet to certify final results to include any ballots returned prior to the extended receipt deadlines.
- 3) Municipal clerks in late-transmittal municipalities shall contact any affected UOCAVA voter for which the municipality has electronic mail contact information by electronic mail to advise that the voter may choose to receive a ballot by facsimile or email instead of by postal mail. If the municipal clerk does not have electronic mail contact information but has facsimile contact information for such voters, the clerk shall provide this notice by facsimile. If the municipal clerk does not have any contact information other than a mailing address the municipal clerk shall contact the Federal Voting Assistance Program to see if it can assist the clerk with obtaining this information.

The notice shall, at a minimum:

- a. explain that the deadline for the ballot to be executed and sent by the voter is April 3, 2012;
  - b. explain that the deadline for receipt of the ballot has been extended to the applicable extended receipt deadline;
  - c. explain the rules for counting the ballots referenced in paragraph (4) below; and
  - d. provide appropriate contact information for the municipal clerk and also the G.A.B. Help Desk (608-261-2028 [gab@wi.gov](mailto:gab@wi.gov)) in the event the voter requires assistance.
- 4) If a ballot was received from an affected UOCAVA voter and counted on Election Day, any additional ballot for the presidential preference primary received after Election Day shall be rejected. If no ballot was received from an affected UOCAVA voter and counted on Election Day, any absentee ballot received from a UOCAVA voter before the applicable extended receipt deadline shall be processed by the municipal board of canvassers. The municipal board of canvassers shall adjust the presidential preference primary results accordingly and report the amended results to the county immediately. If multiple ballots are received after Election Day but before the applicable extended deadline and also comply with all other requirements, the municipal board of canvassers shall accept a single ballot from the elector in the following priority order and reject any lower priority ballots also received from that elector:
- 1. Official Ballot
  - 2. Presidential-only Ballot
  - 3. Federal Write-In Absentee Ballot (FWAB)

Clerks shall update the Absentee Ballot Log, Statewide Voter Registration System, and the GAB-190 Form accordingly.

- 5) By May 11, 2012, municipal clerks in late-transmittal municipalities shall respond to a G.A.B. survey regarding the number of military and overseas absentee ballots sent, received, and counted. The response shall include:
- a. The number of absentee ballots from military or overseas electors received by the municipal clerk on or before April 6, 2012, and counted;
  - b. The number of absentee ballots from military and overseas electors received and counted after April 6, 2012, but prior to any applicable extended deadline;
  - c. The number of absentee ballots from military and overseas electors received later than the applicable extended deadline; and
  - d. The number of absentee ballots from military and overseas electors that were not counted in the April 3, 2012 Presidential Preference Primary Election, for

reasons other than late receipt and the specific reason the ballot was not counted.

#### Obligations of All Municipal Clerks

Due to the actions of the late-transmittal municipalities and non-reporting municipalities regarding UOCAVA compliance for the 2012 Presidential Preference Primary, additional reporting requirements have been imposed upon all municipal and county clerks by the federal court to ensure Wisconsin's compliance with UOCAVA for the remaining 2012 Federal elections. As required by the federal court consent decree, all municipal clerks shall comply with the following:

- 1) By June 8, 2012, respond to a G.A.B. survey regarding the readiness of the municipality to transmit absentee ballots to military and overseas voters for the August Partisan Primary and the November General Election. The response shall state:
  - a. whether the municipality has the technical capacity to transmit all requested ballots by the requested method of transmission;
  - b. whether the municipality anticipates difficulties or a situation that would prevent it from transmitting all requested ballots to UOCAVA voters by the requested method of transmission and by the appropriate deadline;
  - c. what measures the municipality will implement to address any difficulties or obstacles to transmitting all requested ballots to UOCAVA voters by the requested method and by the appropriate deadline; and
  - d. whether it would be appropriate for the Board to provide additional support to any municipality to ensure that it meets the appropriate deadlines.
- 2) By July 2, 2012, provide written or electronic certification to the Board related to the Partisan Primary, of:
  - a. the number of absentee ballot applications received by the municipality on or before June 30, 2012, from any voter entitled to vote pursuant to UOCAVA at the Partisan Primary, and the method of transmission requested;
  - b. the date on which the municipality began sending absentee ballots for the Partisan Primary to those UOCAVA voters;
  - c. the date on which and method of transmission by which the municipality completed sending those absentee ballots for the Partisan Primary; and
  - d. an affirmative declaration that all UOCAVA ballots requested for the Partisan Primary by June 30, 2012, were transmitted by that date by the requested method of transmission.

- 3) By July 16, 2012, provide written or electronic certifications to the Board pertaining to the Partisan Primary, of:
  - a. the number of absentee ballot applications received by the municipality after June 30, 2012 and on or before July 15, 2012 from any voter entitled to vote pursuant to UOCAVA and the method of transmission requested;
  - b. the date on which and method of transmission by which the municipality sent the requested ballots; and
  - c. an affirmative declaration that all UOCAVA ballots requested after June 30, 2012 and on or before July 15, 2012 were transmitted promptly by the requested method of transmission for the Partisan Primary.
- 4) By September 24, 2012, provide written or electronic certification to the Board related to the General Election, of:
  - a. the number of absentee ballot applications received by the municipality on or before September 22, 2012, from any voter entitled to vote pursuant to UOCAVA at the General Election, and the method of transmission requested;
  - b. the date on which the municipality began sending absentee ballots for the General Election to those UOCAVA voters;
  - c. the date on which and method of transmission by which the municipality completed sending those absentee ballots for the General Election; and
  - d. an affirmative declaration that all UOCAVA ballots requested for the General Election by September 22, 2012, respectively were transmitted by that date by the requested method of transmission.
- 4) By October 8, 2012, provide written or electronic certifications to the Board pertaining to the General Election, of:
  - a. the number of absentee ballot applications received by the municipality after September 22, 2012 and on or before October 7, 2012 from any voter entitled to vote pursuant to UOCAVA and the method of transmission requested;
  - b. the date on which and method of transmission by which the municipality sent the requested ballots; and
  - c. an affirmative declaration that all UOCAVA ballots requested after September 22, 2012 and on or before October 7, 2012 were transmitted promptly by the requested method of transmission for the Partisan Primary.

### Obligations of County Clerks

By June 27, 2012 and September 19, 2012, each county clerk shall respond to a G.A.B. survey to certify that each municipality in the county has received a sufficient number of printed absentee ballots to fulfill the requests submitted by UOCAVA voters in advance of the 45-day deadlines for ballot transmission for the Partisan Primary and the General Election, which are June 30, 2012 and September 22, 2012, respectively.

Pursuant to §5.05(1)(e), the Board authorizes its Director and General Counsel to execute these Findings and Order.

**Pursuant to §5.06(8), Wis. Stats., parties may appeal this Order to circuit court within 30 days of issuance of the Order.**

Dated this 23rd day of March, 2012.

**Government Accountability Board**

A handwritten signature in black ink that reads "Kevin J. Kennedy". The signature is written in a cursive, flowing style.

Kevin J. Kennedy  
Director and General Counsel